

1 Rachel E. Kaufman (CSB# 259353)
2 rachel@kaufmanpa.com
3 KAUFMAN P.A.
4 237 South Dixie Highway, 4th Floor
5 Coral Gables, FL 33133
6 Telephone: (305) 469-5881

7 *Attorney for Plaintiff and the Proposed*
8 *Class*

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 VIRGINIA JOHNSON-GRUBER,
12 individually and on behalf of all
13 others similarly situated,

14 Plaintiff,

15 v.

16 PREMIUM CHOICE INSURANCE
17 SERVICES,

18 Defendant.

Case No.

Class Action

JURY TRIAL DEMAND

19
20 Plaintiff Virginia Johnson-Gruver by her undersigned counsel, for this class
21 action complaint against Defendant Premium Choice Insurance Services
22 (“Premium Choice”) and their present, former and future direct and indirect parent
23 companies, subsidiaries, affiliates, agents and related entities, allege as follows:
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I. INTRODUCTION

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3 1. Nature of Action: “Telemarketing calls are intrusive. A great many
4 people object to these calls, which interfere with their lives, tie up their phone
5 lines, and cause confusion and disruption on phone records. Faced with growing
6 public criticism of abusive telephone marketing practices, Congress enacted
7 the Telephone Consumer Protection Act of 1991. Pub. L. No. 102-243, 105 Stat.
8 2394 (1991) (codified at 47 U.S.C. § 227). As Congress explained, the law was a
9 response to Americans ‘outraged over the proliferation of intrusive, nuisance calls
10 to their homes from telemarketers’ *id.* § 2(6), and sought to strike a balance
11 between ‘[i]ndividuals’ privacy rights, public safety interests, and commercial
12 freedoms’ *id.* § 2(9).
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16 2. “The law opted for a consumer-driven process that would allow
17 objecting individuals to prevent unwanted calls to their homes. The result of the
18 telemarketing regulations was the national Do-Not-Call registry. *See* 47 C.F.R. §
19 64.1200(c)(2). Within the federal government’s web of indecipherable acronyms
20 and byzantine programs, the Do-Not-Call registry stands out as a model of clarity.
21 It means what it says. If a person wishes to no longer receive telephone
22 solicitations, he can add his number to the list. The TCPA then restricts the
23 telephone solicitations that can be made to that number. *See id.*; 16 C.F.R. §
24 310.4(b)(iii)(B) (‘It is an abusive telemarketing act or practice and a violation of
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1 this Rule for a telemarketer to . . . initiat[e] any outbound telephone call to a person
2 when . . . [t]hat person’s telephone number is on the “do-not-call” registry,
3 maintained by the Commission.’)...Private suits can seek either monetary or
4 injunctive relief. *Id.*...This private cause of action is a straightforward provision
5 designed to achieve a straightforward result. Congress enacted the law to protect
6 against invasions of privacy that were harming people. The law empowers each
7 person to protect his own personal rights. Violations of the law are clear, as is the
8 remedy. Put simply, the TCPA affords relief to those persons who, despite efforts
9 to avoid it, have suffered an intrusion upon their domestic peace.” *Krakauer v.*
10 *Dish Network, L.L.C.*, 925 F.3d 643, 649-50 (4th Cir. 2019).

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15 3. Plaintiff, individually and as class representative for all others
16 similarly situated, brings this action against Premium Choice for violations of the
17 Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”) for making
18 telemarketing calls to numbers on the National Do Not Call Registry, including
19 their own.
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21
22 4. Because telemarketing campaigns generally place calls to thousands
23 or even millions of potential customers *en masse*, Plaintiff brings this action on
24 behalf of a proposed nationwide class of other persons who received illegal
25 telemarketing calls from or on behalf of Defendant.
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II. PARTIES

5. Plaintiff Johnson-Gruver is an individual.

6. Defendant Premium Choice Insurance Services is a corporation with its principal place of business located in this District.

III. JURISDICTION AND VENUE

7. Jurisdiction. This Court has federal-question subject matter jurisdiction over Plaintiff's TCPA claims pursuant to 28 U.S.C. § 1331 because the TCPA is a federal statute. 47 U.S.C. § 227; *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012).

8. Personal Jurisdiction: This Court has personal jurisdiction over Defendant because they are located in this District.

9. Venue: Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1)-(2) because a substantial part of the events giving rise to Plaintiff's claims—namely, the illegal telemarketing at issue—occurred from this District.

10. Intradistrict Assignment: Assignment to this Division is proper pursuant to Civil Local Rule 3-2(c) because a substantial part of the events or omissions that give rise to Plaintiff's claims—namely, the direction of the illegal telemarketing—occurred from this District and Defendant resides here .

IV. FACTS

A. The Enactment of the TCPA and its Regulations

11. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding certain telemarketing practices.

12. § 227(c) of the TCPA requires the FCC to “initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers’

1 privacy rights to avoid receiving telephone solicitations to which they object.” 47
2 U.S.C. § 227(c)(1).

3
4 13. The National Do Not Call Registry allows consumers to register their
5 telephone numbers and thereby indicate their desire not to receive telephone
6 solicitations at those numbers. *See* 47 C.F.R. § 64.1200(c)(2).

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8 14. A listing on the Registry “must be honored indefinitely, or until the
9 registration is cancelled by the consumer or the telephone number is removed by
10 the database administrator.” *Id.*

11
12 15. The TCPA and implementing regulations prohibit the initiation of
13 telephone solicitations to residential telephone subscribers to the Registry and
14 provides a private right of action against any entity that makes those calls, or “on
15 whose behalf” such calls are made. 47 U.S.C. § 227(c)(5); 47 C.F.R.
16 § 64.1200(c)(2).

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19 **B. Defendant’s Unsolicited Telemarketing to Plaintiff**

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21 16. Plaintiff is, and at all times mentioned herein was, a “person” as
22 defined by 47 U.S.C. § 153(39).

23 17. Plaintiff’s residential telephone number is (530)-363-XXXX.

24
25 18. That number has been on the National Do Not Call Registry since
26 2006 and it has not been removed from the Registry since that time.

27
28 19. The telephone line contacted is a residential telephone number.

1 20. Ms. Johnson-Gruver uses the number for personal and household
2 reasons.

3 21. The Plaintiff's telephone line is registered with her phone company as
4 a personal line and not as associated with a business.

5 22. Plaintiff Johnson-Gruver never consented to receive calls from
6 Premium Choice.
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8 23. Plaintiff Johnson-Gruver never did business with Premium Choice.
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10 24. Despite this, the Plaintiff Johnson-Gruver received multiple
11 unsolicited telemarketing calls from the Defendant on at least November 5 and 8,
12 2022.
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14 25. The Plaintiff is alleging that Premium Choice directly made the calls
15 at issue.
16

17 26. The telemarketing calls all followed a similar script.
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19 27. The caller asked if the Plaintiff had Medicare or Medicaid, or if she
20 had any insurance at all.
21

22 28. The Defendant's telemarketers then asked the Plaintiff for information
23 about her health.

24 29. The Defendant's telemarketers did so in order to identify what
25 insurance policy that they could sell to the Plaintiff and what premium she would
26 have to pay.
27
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1 30. The Defendant's telemarketers would then try to complete the sale.

2 31. The Plaintiff never completed a sale and indicated that she was not
3 interested.
4

5 32. On the calls, the Plaintiff spoke with "Kyle Watson", who was a
6 representative of the Defendant.
7

8 33. Prior to this lawsuit, the Plaintiff's counsel wrote to the Defendant
9 regarding the telemarketing calls.
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11 34. The Defendant did not deny making telemarketing calls to the
12 Plaintiff.
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14 35. Instead, the Defendant claimed that the Plaintiff consented to the
15 telemarketing calls.
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17 36. However, the Plaintiff did not provide her consent to the Defendant
18 for telemarketing calls.
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20 37. The telemarketing alleged herein: (A) invaded Plaintiff's privacy and
21 solitude; (B) wasted Plaintiff's time; (C) annoyed Plaintiff; (D) tied up Plaintiff's
22 phone line; and (E) harassed Plaintiff.
23

24 **V. CLASS ACTION ALLEGATIONS**

25 38. Class Definition. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3),
26 Plaintiff brings this case on behalf of the Class (the "Class") defined as follows:
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1 **National Do Not Call Registry Class:** All persons in the United
2 States whose (1) residential telephone numbers were on the National
3 Do Not Call Registry for at least 31 days, (2) but who received more
4 than one telemarketing call from or on behalf of Defendant, (3) within
5 a 12-month period, (4) at any time in the period that begins four years
6 before the date of filing this Complaint to trial.

7 39. Excluded from the Class are counsel, Defendant, any entities in
8 which Defendant has a controlling interest, Defendant's agents and employees, any
9 judge to whom this action is assigned, and any member of such judge's staff and
10 immediate family.

11 40. The Class, as defined above, is identifiable through telephone records
12 and telephone number databases.

13 41. The potential members of the Class likely number at least in the
14 hundreds because of the *en masse* nature of telemarketing calls.

15 42. Individual joinder of these persons is impracticable.

16 43. Additionally, the disposition of the claims in a class action will
17 provide substantial benefit to the parties and the Court in avoiding a multiplicity of
18 identical suits.

19 44. Plaintiff is a member of the Class and will fairly and adequately
20 represent and protect the interests of the Class as she has no interests that conflict
21 with any of the class members.

1 45. Plaintiff and all members of the Class have been harmed by the acts of
2 Defendant, including, but not limited to, the invasion of their privacy, annoyance,
3 waste of time, and the intrusion on their telephone that occupied it from receiving
4 legitimate communications.
5

6 46. This class action complaint seeks injunctive relief and money
7 damages.
8

9 47. There are numerous questions of law and fact common to Plaintiff and
10 members of the Class. These common questions of law and fact include, but are
11 not limited to, the following:
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13 a. whether Defendant systematically made multiple telephone
14 calls to members of the National Do Not Call Registry Class;
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16 b. whether Defendant made calls to Plaintiff and members of the
17 National Do Not Call Registry Class without first obtaining prior express written
18 consent to make the calls; and
19

20 c. whether members of the Class are entitled to treble damages
21 based on the willfulness of Defendant's conduct.
22

23 48. Plaintiff's claims are typical of the claims of the Class.

24 49. Plaintiff's claims, like the claims of Class, arise out of the same
25 common course of conduct by Defendant and are based on the same legal and
26 remedial theories.
27
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1 50. Plaintiff is an adequate representative of the Class because her
2 interests do not conflict with the interests of the Class, she will fairly and
3 adequately protect the interests of the Class, and she is represented by counsel
4 skilled and experienced in class actions, including TCPA class actions.
5

6 51. Common questions of law and fact predominate over questions
7 affecting only individual class members, and a class action is the superior method
8 for fair and efficient adjudication of the controversy. The only individual question
9 concerns identification of class members, which will be ascertainable from records
10 maintained by Defendant and/or its agents.
11

12 52. A class action is the superior method for the fair and efficient
13 adjudication of this controversy. Class-wide relief is essential to compel Defendant
14 to comply with the TCPA. The interests of individual members of the Class in
15 individually controlling the prosecution of separate claims against Defendant are
16 small because the damages in an individual action for violation of the TCPA are
17 small. Management of these claims is likely to present significantly more
18 difficulties than are presented in many class claims. Class treatment is superior to
19 multiple individual suits or piecemeal litigation because it conserves judicial
20 resources, promotes consistency and efficiency of adjudication, provides a forum
21 for small claimants, and deters illegal activities. There will be no significant
22 difficulty in the management of this case as a class action.
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1 53. Defendant has acted on grounds generally applicable to the Class,
2 thereby making final injunctive relief and corresponding declaratory relief with
3 respect to the Class appropriate on a class-wide basis. Moreover, on information
4 and belief, Plaintiff alleges that the telephone solicitation calls made by Defendant
5 and/or its affiliates, agents, and/or other persons or entities acting on Defendant's
6 behalf that are complained of herein are substantially likely to continue in the
7 future if an injunction is not entered.
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11 **FIRST CAUSE OF ACTION**
12 **Telephone Consumer Protection Act**
13 **Violations of 47 U.S.C. § 227(c)(5) & 47 C.F.R. § 64.1200(c)**
14 **(On Behalf of Plaintiff and the National Do Not Call Registry Class)**

15 54. Plaintiff repeats the prior allegations of this Complaint and
16 incorporates them by reference herein.

17 55. The foregoing acts and omissions of Defendant constitute numerous
18 and multiple violations of the TCPA, 47 U.S.C. § 227, by making telemarketing
19 calls, except for emergency purposes, to Plaintiff and members of the National Do
20 Not Call Registry Class despite their numbers being on the National Do Not Call
21 Registry.
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24 56. Defendant's violations were negligent, willful, or knowing.

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26 57. As a result of Defendant's violations of the TCPA, 47 U.S.C. § 227,
27 Plaintiff and members of the National Do Not Call Registry Class are
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1 presumptively entitled to an award of between \$500 and \$1,500 in damages for
2 each call made.

3 58. Plaintiff and the members of the National Do Not Call Registry Class
4 are also entitled to and do seek injunctive relief prohibiting Defendant and/or its
5 affiliates, agents, and/or other persons or entities acting on Defendant's behalf
6 from making telemarketing calls to telephone numbers registered on the National
7 Do Not Call Registry, except for emergency purposes, in the future.
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10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for
12 the following relief:
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- 14 A. Certification of the proposed Class;
15 B. Appointment of Plaintiff as representative of the Class;
16 C. Appointment of the undersigned counsel as counsel for the Class;
17 D. A declaration that Defendant and/or its affiliates, agents, and/or other
18 related entities' actions complained of herein violated the TCPA;
19 E. An order enjoining Defendant and/or its affiliates, agents, and/or other
20 persons or entities acting on Defendant's behalf from making telemarketing calls to
21 numbers on the National Do Not Call Registry, absent an emergency circumstance;
22 F. An award to Plaintiff and the Class of damages, as allowed by law;
23
24 and
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1 G. Orders granting such other and further relief as the Court deems
2 necessary, just, and proper.

3 **VI. DEMAND FOR JURY**

4
5 Plaintiff demands a trial by jury for all issues so triable.

6 **RESPECTFULLY SUBMITTED AND DATED** this 13th day of January,
7 2023.

8
9 By: /s/ Rachel E. Kaufman

10 Rachel E. Kaufman (Cal Bar No. 259353)

11 rachel@kaufmanpa.com

12 KAUFMAN P.A.

13 237 South Dixie Highway, 4th Floor

14 Coral Gables, FL 33133

15 Telephone: (305) 469-5881

16 *Attorney for Plaintiff and the Proposed Class*